STATE OF MICHIGAN

COURT OF APPEALS

DWIGHT PRYOR, JR., a minor, by FELICIA PRYOR, as Next Friend,

Plaintiff-Appellee,

v

HARPER HOSPITAL-DMC d/b/a DMC HOSPITAL PARTNERSHIP,

Defendant-Appellant.

UNPUBLISHED
October 31, 2013

No. 301942
Wayne Circuit Court
LC No. 08-124463-NO

DWIGHT PRYOR, JR., a minor, by FELICIA PRYOR, as Next Friend,

Plaintiff-Appellee,

v

HARPER HOSPITAL-DMC d/b/a DMC HOSPITAL PARTNERSHIP,

Defendant-Appellant.

No. 307944
Wayne Circuit Court
LC No. 08-124463-NO

Before: SERVITTO, P.J., and CAVANAGH and WILDER, JJ.

PER CURIAM.

Defendant appeals as of right a judgment entered in favor of plaintiff, Dwight Pryor, Jr., a minor, by his next friend, Felicia Pryor, following a jury trial in this negligence action. In particular, defendant challenges the trial court's orders denying its motions for summary disposition and for judgment notwithstanding the verdict (JNOV), and awarding plaintiff case evaluation sanctions. We affirm the orders denying defendant's motions for summary disposition and JNOV. We also affirm the trial court's decision to award plaintiff case evaluation sanctions, but vacate the actual award and remand for redetermination of the amount to which plaintiff is entitled.

On June 1, 2007, plaintiff was burned by a malfunctioning halogen light while he was hospitalized in defendant's neonatal intensive care unit. In his complaint, plaintiff generally averred that defendant owned the malfunctioning halogen light, allowed its employees and agents to use the malfunctioning halogen light, and the malfunctioning halogen light caused his injuries. Plaintiff alleged that the halogen light (1) had been malfunctioning and was in disrepair yet it was still used during his care and treatment, and (2) was neither properly secured to a wall nor positioned at a safe distance from him while being used. Defendant moved for the summary dismissal of plaintiff's complaint, arguing that this was a medical malpractice case and must be dismissed because plaintiff failed to file an affidavit of merit. The trial court denied the motion, holding that "this is a case of ordinary negligence and not medical malpractice." Thereafter, defendant conceded liability and the case proceeded to a jury trial on the issue of damages only.

Following the jury verdict in plaintiff's favor, defendant filed a motion for JNOV, seeking to enforce the statutory cap for noneconomic damages in medical malpractice actions, as set forth at MCL 600.1483. Plaintiff filed a motion for case evaluation sanctions. The trial court denied defendant's motion, holding that its conclusion—that this was an ordinary negligence case—had not been proven erroneous by the submission of new facts or law. And the trial court granted plaintiff's motion, awarding case evaluation sanctions in the amount of $101,750. These appeals followed. In docket no. 301942, defendant challenges the trial court's orders denying its motions for summary disposition and JNOV on the ground that this was a medical malpractice action. In docket no. 307944, defendant challenges the amount of attorney fees awarded by the trial court in its determination of case evaluation sanctions.

I. DOCKET NO. 301942

Defendant argues that its motions for summary disposition and for JNOV should have been granted because plaintiff's claim sounds in professional, not ordinary, negligence. We disagree.

Initially, we agree with defendant that it did not waive this issue by admitting liability. A wavier is "an intentional abandonment of a known right." *In re Receivership of 11910 South Francis Rd*, 492 Mich 208, 228; 821 NW2d 503 (2012). Here, the joint final pretrial order expressly preserved defendant's claim that this was a medical malpractice case. And defendant raised this issue in its motions for summary disposition and for JNOV; thus, the issue is preserved for appellate review. See *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

"In determining whether the nature of a claim is ordinary negligence or medical malpractice . . . a court does so under MCR 2.116(C)(7)." *Bryant v Oakpointe Villa Nursing Ctr, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004). We review de novo the trial court's decision. *Id*.

> Under MCR 2.116(C)(7) . . . this Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. This Court must consider the documentary evidence in a light most favorable to the

> nonmoving party. If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate. [*RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 687; 762 NW2d 529 (2008) (citations omitted).]

In determining whether a claim is one for ordinary negligence or medical malpractice, a court must ask:

> (1) whether the claim pertains to an action that occurred within the course of a professional relationship; and (2) whether the claim raises questions of medical judgment beyond the realm of common knowledge and experience. If both these questions are answered in the affirmative, the action is subject to the procedural and substantive requirements that govern medical malpractice actions. [*Bryant*, 471 Mich at 422.]

The dispute in this case concerns only the second requirement, i.e., whether plaintiff's claim raises questions of medical judgment beyond the realm of common knowledge and experience.

First, we address the issue whether defendant's motion for summary disposition was erroneously denied by the trial court. As discussed above, plaintiff alleged in his complaint that defendant owned the malfunctioning halogen light, allowed its employees and agents to use the malfunctioning halogen light, and the malfunctioning halogen light caused his injuries. Plaintiff alleged that defendant was directly and vicariously liable for the following acts:

> a. Failure to utilize a fully functioning and safe light source, in this case a halogen lamp, to illuminate a patient;
>
> b. Failure to adequately and timely repair or replace light sources, in this case a halogen lamp, that have been shown to malfunction;
>
> c. Failure to ensure that a halogen lamp used to illuminate a patient is adequately and safely secured, e.g., to a wall;
>
> d. Failure to place a halogen lamp at a safe distance above an infant so as to not cause a serious burn;
>
> e. Any other breaches which may be discovered through the course of litigation in this matter.

In its motion for summary disposition, defendant quoted these allegations and then argued that, as the trial court could see, plaintiff's complaint "sounds in medical malpractice because it raises allegations of patient supervision and medical judgment in the context of a professional medical relationship." Accordingly, defendant argued, plaintiff was required to file an affidavit of merit and, because he failed to do so, summary disposition must be granted.

Plaintiff initially responded to defendant's motion, arguing that the motion was premature because he had not had an opportunity to conduct sufficient discovery and, in any case, this was

a case of ordinary negligence, not medical malpractice. Subsequently, plaintiff filed a supplemental response to defendant's motion, arguing that the registered nurse, Holly Thompson, who provided care to him, testified in her deposition that the halogen light had been malfunctioning well before the surgical procedure began. Plaintiff argued that Thompson's testimony illustrated that this was clearly a case of ordinary negligence because no medical judgment was involved with regard to the use of the light. Photographs of the light were attached to plaintiff's response, as were excerpts of Thompson's deposition testimony.

Specifically, Thompson testified that plaintiff was admitted to the neonatal unit at 8:45 p.m., and she placed him in an isolette with a warmer. One of the first things she did was to start an IV on plaintiff. She turned on the middle halogen light that was mounted to the wall so that she could place an IV in plaintiff's right hand. She would have started the IV between 8:45 p.m. and 9:20 p.m., and believed that the halogen light "probably would have been on from the very beginning," meaning from 8:45 p.m. At 9:20 p.m., a physician began a procedure to place umbilical arterial and venous lines; thus, the halogen light would have been on for 30 to 35 minutes before the procedure began. Thompson testified that, while she was holding plaintiff's umbilicus so that the physician could apply Betadine around it, she noticed "the spot." While she was still holding the umbilicus, she asked the physician if he knew what "this spot" was and he said he did not know. The "spot" had "fluid underneath it."

The physician then proceeded to drape sterile towels down around Thompson's arm, plaintiff's abdomen, and the umbilicus. When Thompson was asked whether the halogen light was still on, she testified: "Well, at that point I had gotten other lights because I had a problem with that light earlier when I was starting the IV. It was turning off and on [flickering] on me and then I got it to work for me." She further testified: "Well, at one point just before starting the procedure, I had recalled that the light wasn't working again and that's when I brought two lights [of the same type] from the opposite bedside to come in and put light on the field." Further, Thompson explained: "this light, my original lamp, it turned off -- had turned off. There were moments that I would have to leave the room and come back in, and at one of those moments, I noticed the light was off again and that was the time when I -- before he had even draped the baby, I had tried the toggle again and wiggled it again and got it to work."

Then Thompson was specifically asked: "Now, at 9:20 when [the physician] is starting the line placement, what lights are on at that point, just the middle one?" Thompson replied: "The middle one is not on anymore. It turned itself off, so I just said forget about that one. I got the two other ones and brought it [sic] over. I didn't even pay attention to that one anymore." When asked which halogen lights were on at the time Thompson noticed the blister, she testified that the lights located on the left and right side were on, but not the original middle halogen light that had been malfunctioning.

At 9:30 p.m., the physician stopped the line placement procedure and removed the sterile towels. Thompson then saw a larger blistered area on plaintiff's abdomen. Thompson charted that plaintiff had a burn "secondary to malfunctioning halogen lamp." Later she revised her note to add the word "likely." Thompson testified that she wrote that note "[b]ecause when I had noticed the lamp after the procedure was done, the one in the middle, the light was still off, but I had noticed that the handle part was askew and - - the light was off but it was askew. It was like -- and I thought, 'Oh my goodness. It's going to fall. I have to grab it and take it apart and put it

on the counter.'" The handle that was "askew" was "the part that I used to pull the light around." Thompson was asked: "the black handle which goes over the area where the Halogen light bulb is was off of that, correct?" Thompson answered: "Correct." She was then asked: "So that the light bulb would have been able to shine out without being blocked by the black handle?" And Thompson answered: "Correct."

On appeal, defendant argues that this is a medical malpractice case. Defendant specifically argues as follows:

> Unquestionably, Dwight Pryor urgently needed the medical or surgical procedure in the hospital by doctors and nurses known as "umbilical catheterization insertion". This involves the medical procedure of the insertion of a catheter into the neonate's body by a doctor, assisted by a nurse, with the infant's being on an operating table, the area greatly illuminated by a surgical lamp. In this case, the medical judgment of the operating team and the inexorable necessity of beginning and continuing the procedure (to bring medical aid for an infant with a critical lack of absolutely essential oxygenation) [ ] and access for IV's [ ] mandated that the medical procedure be continued for as long as it did, despite the appearance of small (but then growing) blisters brought about by a defective surgical lamp. [ ]
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> * * *
>
> The doing of this medical procedure, the continuance of it in light of smaller and then larger blisters and when to break it off were all exclusively addressed to the medical judgment and discretion of the doctor and the nurse: "Ordinary negligence" has nothing to do with the medical team's medically sophisticated assessment of life-saving urgency to continue the medical procedure as the child was not breathing properly, his blood gases were all wrong, without proper oxygenation a catastrophic intervention of a ventilator was in the offing. . . . The tests of Bryant [ ] were all met in every relevant detail.

To the extent that this argument can be understood, it is wholly without merit.

As set forth above, plaintiff did not allege in his complaint that defendant's agents or employees were negligent with regard to any decisions to perform, continue, or stop the placement of the umbilical arterial and venous lines. Instead, plaintiff alleged that defendant was negligent because it provided a malfunctioning halogen light for use during his medical care and treatment, which was in fact used, and which caused him to be burned. Thompson clearly testified that she turned on and used the malfunctioning halogen light, and it was on for about 30 to 35 minutes before the physician began his procedure. She also testified that the malfunctioning halogen light was not on at the time the physician began the procedure. And the burn was noticed almost immediately after the physician began preparing the surgical site, i.e., while he was putting Betadine on the umbilicus and before the sterile towels were even placed.

In *Bryant*, our Supreme Court explained that "[t]he fact that an employee of a licensed health care facility was engaging in medical care at the time the alleged negligence occurred means that the plaintiff's claim may *possibly* sound in medical malpractice; it does not mean that

the plaintiff's claim *certainly* sounds in medical malpractice." *Bryant*, 471 Mich at 421. If the claim "raises questions of medical judgment beyond the realm of common knowledge and experience," it is a medical malpractice action. *Id*. at 422. That is, if the reasonableness of the disputed action "can be evaluated by a jury only after having been presented the standards of care pertaining to the medical issue before the jury explained by experts, a medical malpractice claim is involved." *Id*. at 423. Further, the *Bryant* Court explained: "The pertinent question remains whether the alleged facts raise questions of medical judgment or questions that are within the common knowledge and experience of the jury." *Id*. at 426.

In this case, plaintiff's alleged facts raise questions that are within the common knowledge and experience of the jury. Plaintiff claimed that defendant, through its agents, servants, and employees, failed to use a fully functioning and safe halogen light, failed to adequately and timely repair the malfunctioning halogen light, and failed to place the malfunctioning halogen light at a safe distance so as not to cause a serious burn. Thompson testified that the halogen light was malfunctioning when she was placing plaintiff's IV, but she continued to use it and kept it on, even when she left plaintiff's room, until it turned off by itself. In her attempts to get the lamp to stay on, she "tried the toggle again and wiggled it again and got it to work." Thompson later noticed that the handle that she used to pull the light around was "askew." Because the handle was "askew" the light bulb shined without being blocked by the handle. The reasonableness of the disputed actions—to use a malfunctioning halogen light during the care and treatment of the infant plaintiff, to continue to use it instead of taking it out of service for repair, and then to place it so close to plaintiff's body that he is burned—can be evaluated by lay jurors on the basis of their common knowledge and experience. Further, as noted in *Bryant*, no expert testimony is needed where the defendant is aware of a hazardous condition that puts an individual in peril and fails to take any corrective action after learning of the problem. *Id*. at 431. Consequently, the trial court properly denied defendant's motion for summary disposition. This was an ordinary negligence case.

Second, we address the issue whether defendant's motion for JNOV was erroneously denied by the trial court.

In its motion for JNOV, defendant again argued that this case "was clearly one of alleged medical malpractice masquerading as ordinary negligence." After noting that the trial court previously denied defendant's motion for summary disposition premised on the same argument, defendant stated: "We renew that objection to this suit by requesting a global dismissal of all claims presented at this "Ordinary Negligence" Trial by requesting Judgment Notwithstanding the Verdict." Defendant did not set forth or quote any trial testimony in support of its claim that this was a medical malpractice case, but generally argued as follows:

> First of all, the treatment decision to utilize, not to interrupt treatment during the medical procedure, and to continue using halogen surgical lamps by [defendant's physician] and Nurse Thompson requires medical expert standard of care testimony. Since this indisputably took place during medical treatment of a surgical procedure on [plaintiff], the medical judgment of [the physician] and Nurse Thompson was indubitably made exclusively in the medical treatment setting: After all, inserting an umbilical catheter for surgical treatment of [plaintiff] with the continued use of the lamps during that medical treatment, not

> to discontinue the treatment/procedure, was a treatment decision which was flatly beyond the comprehension of lay jurors and squarely necessitated the use of medical expert testimony and was, at its core essence, medical malpractice.

Because liability was not contested, the case proceeded to trial on the issue of damages only. Thus, there was minimal factual development regarding plaintiff's liability theory predicated on the malfunctioning halogen light. But Thompson's trial testimony, albeit brief, was consistent with her deposition testimony.

Following oral arguments on defendant's motion for JNOV, the trial court held:

> I am satisfied that I was right . . . I have not been apprized [sic] of any new law, any new facts, anything that should persuade me that my initial call was in error when I indicated it was an ordinary negligence case. A malfunctioning light on a baby at fairly close range and that it might cause damage, injury, is not something that would be medical judgment beyond the realm of common knowledge and experience, and I'm specifically quoting prong two of the Bryant versus Oak Pointe Villa Nursing Home case.

We agree with the trial court. As set forth above with regard to defendant's claim that it was entitled to summary dismissal, we conclude that the reasonableness of the disputed actions that caused plaintiff to suffer burn injuries could have been evaluated by lay jurors on the basis of their common knowledge and experience. As the trial court held, defendant did not set forth any new facts developed at trial which would lead to the conclusion that expert testimony was necessary for a jury to determine the reasonableness of the disputed actions. Consequently, we affirm the trial court's decision to deny defendant's motion for JNOV.

Accordingly, we affirm the trial court's judgment for plaintiff.

II. DOCKET NO. 307944

Defendant does not dispute plaintiff's entitlement to case evaluation sanctions if the judgment in plaintiff's favor is upheld. Because we affirm the judgment, we likewise affirm the trial court's decision to award plaintiff case evaluation sanctions. Defendant argues, however, that the trial court erred in determining the amount of reasonable attorney fees to be awarded as case evaluation sanctions. We agree.

We review a trial court's award of attorney fees under the case evaluation rule, MCR 2.403(O), for an abuse of discretion. *Van Elslander v Thomas Sebold & Assoc, Inc*, 297 Mich App 204, 211; 823 NW2d 843 (2012). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Id*.

MCR 2.403(O)(1) provides:

> If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation. However, if the

> opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the evaluation.

Actual costs are defined in MCR 2.403(O)(6)(b) to include "a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the case evaluation."

This Court follows the strictures and guidelines provided in *Smith v Khouri*, 481 Mich 519; 751 NW2d 472 (2008), when considering the reasonableness of attorney fees. *Van Elslander*, 297 Mich App at 227. According to *Smith*, the trial court is initially required to determine a baseline figure determined by considering the fee customarily charged in the locality for similar legal services. *Id*. at 531. Reliable surveys and other credible evidence regarding the legal market should be considered in making this initial determination. *Id*. at 530-531. The trial court is then required to multiply this number by a reasonable number of hours expended in the case, and to then make up or down adjustments using the factors listed in Rule 1.5(a) of Michigan Rules of Professional Conduct (MRPC) and *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982), and any additional relevant factors. *Smith*, 481 Mich at 529-533. The trial court should briefly indicate its view of each factor to aid appellate review. *Id*. at 537.

Plaintiff argued in his motion for case evaluation sanctions that his attorney, Ven Johnson, was entitled to an hourly rate of $600 and his co-counsel, Thomas Lizza, was entitled to an hourly rate of $450. Plaintiff claimed that the reasonable attorney fee for legal services rendered on his behalf since defendant rejected the case evaluation was $126,945. In support of his claim that Johnson's hourly rate should be $600, plaintiff attached a copy of an order issued in 2007 by the Wayne Circuit Court which held that Johnson was entitled to an hourly rate of $600. In plaintiff's supplemental brief in support of his claim of reasonable attorney fees, plaintiff provided an extensive history of Johnson's practice of law, including successful litigation history, awards, memberships, and speaking engagements. Plaintiff repeated that Johnson had been awarded an hourly rate of $600 nearly four years before, and also set forth evidence of other attorneys being awarded an hourly rate of $600, including his then-partner Jeffrey Fieger. Plaintiff attached affidavits from other local practicing attorneys who attested that a $600 hourly fee was reasonable. Plaintiff also attached as an exhibit the State Bar of Michigan's 2010 Economics of Law Practice Attorney Income and Billing Rate Summary Report, which indicated that plaintiff personal injury attorneys in the 95th percentile earned $600 an hour and attorneys in the 75th percentile earned $400 an hour. Accordingly, plaintiff argued, in light of Johnson's 25 years of practicing as a highly successful trial attorney, who is AV-rated by Martindale-Hubbell, he should be regarded to be within the 95th percentile of all practitioners and, thus, entitled to an hourly rate of $600. Further, co-counsel Lizza, was also a highly accomplished attorney and should be entitled to an hourly rate of $400.

Defendant responded to plaintiff's motion for case evaluation sanctions, arguing that the hourly rates for plaintiff's attorneys were excessive and, combined, totaled $1050 an hour. Defendant argued that, in Oakland County, where plaintiff's attorneys were located, the median hourly rate was $175 and the upper range was $250 per hour. Defendant included as an exhibit to its brief a report by Dr. Lawrence Stiffman, the former statistician for the State Bar of Michigan Survey on Legal Fees, which indicated that, in 2006, similarly experienced personal injury plaintiff attorneys in the 75th percentile earned $200 to $250 an hour. Defendant also

argued that an attorney who secured a $58 million dollar verdict, the highest personal injury verdict in Michigan history, received only $250 per hour. In defendant's supplemental brief in opposition to plaintiff's motion, defendant argued that the 2010 State Bar of Michigan Economics of Law Survey Results compelled a much lower award of attorney fees for plaintiff's attorneys. Defendant argued that "the upper quartile of all Southfield and south Oakland County attorneys is $300 to $350 (75th-94th Percentile)." While there are higher rates in the 95th percentile, defendant admitted, they were "highly generous rates [and] are not subject to audits." Defendant also attached a letter from an attorney practicing at the law firm of Lewis Munday which indicated that his firm's customary hourly rates were between $350 and $450. Defendant further noted that this Court in *Temple v Kelel Distributing Co, Inc*, 183 Mich App 326; 454 NW2d 610 (1990), held that $1,000 an hour was patently excessive; thus, the trial court should reject plaintiff's request for a combined hourly rate that exceeded $1,000 an hour.

Following a hearing on the matter, the trial court issued its 14-page written opinion. The trial court extensively reviewed the parties' arguments and supporting exhibits. Relying on the cases of *Wood*, 413 Mich at 588, *Zdrojewski v Murphy*, 254 Mich App 50, 72; 657 NW2d 721 (2002), and *Smith*, 481 Mich at 530-533, the trial court examined several factors. First, the trial court considered what the customarily charged fee was in the locality for similar legal services and noted the billing rate evidence provided by the parties, i.e., defendant's exhibits showed a range of $195 to $500, while plaintiff's indicated the average to be $374 with the upper rate as $600. The court held that both of plaintiff's attorneys were experienced, with one practicing over 24 years and the other 27 years. Second, the trial court concluded that the case required great skill, time, and labor. Third, the court concluded that the results and amount achieved were excellent for plaintiff. Fourth, the court concluded that the case was difficult and included a trial. The trial court declined to address the fifth factor, the expenses incurred, because the parties had already reached agreement on that issue. The trial court noted that the sixth factor, the nature of the professional relationship with the client, was not relevant in light of the nature of the case. The trial court concluded that: "because of the fee customarily charged in this locality (with an office in Southfield, Michigan), the high professional standing and extensive and lengthy experiences of both attorneys, the complexity of the case, and the result achieved, the Court finds that a reasonable rate for attorney Johnson is $525 per hour and that a reasonable rate for attorney Lizza is $400 per hour." The trial court also considered the fact that two attorneys worked on plaintiff's case and, citing *Campbell v Sullins*, 257 Mich App 179; 667 NW2d 887 (2003), held that "work by two attorneys at the same law firm, particularly where one attorney bills significantly fewer hours than the other, is reasonable under the circumstances where a case requires expertise in more than one aspect of the case." Accordingly, the trial court concluded that attorney Lizza was entitled to an hourly fee of $400 for 133.1 hours and attorney Johnson was entitled to an hourly fee of $525 for 92.4 hours.

On appeal, defendant argues that the trial court failed to follow the methodology set forth in *Smith* which required, first, that a baseline figure be determined by considering: (1) the fee customarily charged in the locality for similar legal services, and (2) the reasonable number of hours expended in the case. As held by the *Smith* Court: "The number produced by this calculation should serve as the starting point for calculating a reasonable attorney fee." *Id*. at 531. It is only after this baseline figure is determined, defendant argues, that the trial court is then permitted to examine the remaining *Wood* and MPRC factors and decide whether the baseline figure should be adjusted up or down. We agree.

Although the trial court referred to *Smith* and summarized survey evidence provided by the parties, it failed to follow the methodology set forth in *Smith*. The trial court did not determine a baseline figure and then determine whether that figure should be adjusted in light of the particular circumstances of this case. We disagree, however, with defendant's argument that it is improper to consider the amount in question and the result achieved when determining reasonable attorney fees. Although the lead opinion in *Smith*, 481 Mich at 534 n 20, indicated that this factor should not be considered, because a majority of justices did not concur in this part of the lead opinion, it is not binding. "Plurality decisions in which no majority of the justices participating agree as to the reasoning are not an authoritative interpretation binding on this Court under the doctrine of *stare decisis*." *Negri v Slotkin*, 397 Mich 105, 109; 244 NW2d 98 (1976). We also note that the trial court's decision may have been influenced by its characterization of this case as a medical malpractice action, notwithstanding its prior determinations that this was an ordinary negligence case. And while the trial court excluded certain hours claimed by plaintiff's two attorneys when determining the reasonable hours expended by each attorney, the court failed to give proper consideration to whether plaintiff met his burden of showing that the hours claimed for the two attorneys were not needlessly duplicative. See *Smith*, 482 Mich at 532 n 17; *Van Elslander*, 297 Mich App at 239. The trial court made only the conclusory remark that "[a]s may be the situation in the case before this Court, some attorneys may be better at performing in court and some may have a better command on the subject matter such as medical malpractice and understanding the science behind the medicine." Similarly, the trial court did not explain how the circumstances of this case, which involved defendant's admission to liability and a trial limited only to damages, justified fees for two attorneys. Accordingly, the trial court properly determined that plaintiff was entitled to an award of case evaluation sanctions. However, we vacate the trial court's award and remand for redetermination of plaintiff's reasonable attorney fees, consistent with our opinion and the approach set forth in *Smith*, 481 Mich at 530-533 and *Van Elslander*, 297 Mich App at 227-241.

In Docket No. 301942, we affirm the judgment for plaintiff. In Docket No. 307944, we affirm the trial court's order to the extent that it holds that plaintiff is entitled to case evaluation sanctions, but we vacate the part of the order setting forth the amount of the award and remand for redetermination of the amount to which plaintiff is entitled.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder